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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

Defendants.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge
Dept. 37

Complaint Filed: May 28, 2009

PLAINTIFF'S BRIEF IN SUPPORT OF ORAL
MOTION *IN LIMINE* TO PRECLUDE
PLAYING OF AUDIO TAPE OF PLAINTIFF
STEVE KARAGIOSIAN'S INTERVIEW BY
SEGIO BENT; DECLARATION OF STEVE
KARAGIOSIAN

Trial Date: March 19, 2012

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 In this discrimination action by a police officer against the city that employs him, the
4 Defendant has indicated its intention to play to the jury, during its opening argument, unspecified
5 portions of audio tapes of interviews of plaintiff by Sergio Bent, an investigator hired by the city,
6 and to play two hours of the three-hour tapes during the presentation of its evidence. Defendant
7 indicated to the court that the tapes last two hours, not including short insignificant portions.
8 However, as is set forth in the attached Declaration of Steven Karagiosian, the recordings last over
9 three hours.

10 Plaintiff moves to exclude the playing of any portion of the recordings during opening and
11 closing arguments and during the presentation of evidence. However, if Defendant were allowed to
12 play any portion of the recordings or otherwise present into evidence any statements therein,
13 Plaintiff requests that he be allowed to play the remainder of the recordings in order to give an
14 accurate reflection of their meaning.

15 **II. THE TAPES ARE ONLY ADMISSIBLE FOR IMPEACHMENT**

16 The Public Safety Officers Procedural Bill of Rights Act (Gov C § 3300 et seq.) (“POBRA”)
17 provides that “No statement made during interrogation by a public safety officer under duress,
18 coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This
19 subdivision is subject to the following qualifications: . . . [¶] (3) This subdivision shall not prevent
20 statements made by a public safety officer under interrogation from being used to impeach the
21 testimony of that officer after an in camera review to determine whether the statements serve to
22 impeach the testimony of the officer.” (Cal *Government Code* § 3303(f).)

23 In *City of L.A. v. Superior Court* (1997) 57 Cal.App.4th 1506, the court upheld the trial
24 court’s suppression of such evidence in the city’s case in chief. The court explained:

25 We review the record to determine whether there is a reasonable basis for suppression in
26 the present case. Unlike the officer in *Hanna*, Officer Labio did not request representation,
27 nor did he ask to have the proceedings tape recorded. But he might well have invoked both

1 those rights, as he later did, had he been informed he was under investigation. In addition,
2 suppression in this case may serve a deterrent effect. Unlike in *Williams*, in this case no other
3 deterrent exists. We conclude that the trial court did not abuse its discretion insofar as it
4 ordered suppression of Officer Labio's statement from the City's case-in-chief.

5 (*City of L.A. v. Superior Court*, supra, at p.1517.)

6 However, the court held that the trial court also erred in not admitting the statements for the
7 purpose of impeachment. (*Id* at p.1518.) IN the case at bar, since the tapes are only admissible for
8 the purpose of impeachment, it would be improper to play portions during opening argument, as
9 there is no testimony at that point to impeach. Furthermore, during trial, only those portions of the
10 tapes that impeach specific testimony are admissible, not the entire recordings.

11 **III. THE COURT MUST LISTEN TO THE ENTIRE RECORDINGS**
12 **TO DETERMINE IF THEIR PROBATIVE VALUE OUTWEIGHS**
13 **THE UNDUE CONSUMPTION OF TIME**

14 "The court in its discretion may exclude evidence if its probative value is substantially
15 outweighed by the probability that its admission will (a) necessitate undue consumption of time or
16 (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."
17 (*California Evidence Code* §352.)

18 In *People v. Filson* (1994) 22 Cal.App.4th 1841, the court held that, in determining whether
19 to exclude an audio recording under §352, the court had to know what was on the tape. The court
20 explained:

21 Section 352 gives a trial court discretion to exclude probative evidence, but the nature of
22 discretion requires that the court's decision must be an informed one. " 'To exercise the power
23 of judicial discretion all the material facts . . . must be both known and considered.' "

24 (Citations.) This court recently noted that "Judicial discretion must be informed, so that its
25 exercise does not amount to a shot in the dark." (Citation.) Here, although the existence of the
26 tape was not in dispute, neither side appears to have had a precise idea of what was on it.

27 Indeed, the very point of the defense trying to get the tape was to acquire that knowledge. By

1 ruling without knowing what was on the tape, the trial court could not make an intelligent
2 evaluation of any probative value of the tape, could not assess any prejudice it might pose,
3 and therefore could not undertake the weighing of these factors required for an informed
4 exercise of the discretion granted by section 352. (Citation.) In short, the trial court could not
5 be in the position to exercise any discretion until it knew what was on the tape.

6 (*People v. Filson* (1994) 22 Cal.App.4th 1841, 1849-1850, footnote omitted.)

7 As is set forth in the attached declaration of Steve Karagiosian, the transcripts provided by
8 Defendant of the audio recordings do not accurately set forth their contents. Thus, in order for this
9 Court to make an "informed decision," in compliance with *Filson, supra*, on whether to exclude the
10 recordings, it must listen to them.

11 IV. CONCLUSION

12 For the foregoing reasons, Plaintiff respectfully requests that the Court grant its oral motion
13 *in limine*, and exclude the playing of the audio tapes, and the admission of any statements therein,
14 both during opening and closing arguments, and the presentation of evidence. However, if
15 Defendant is allowed to play any portion of the recordings or otherwise present into evidence any
16 statements therein, Plaintiff requests that he be allowed to play the remainder of the recordings in
17 order to give an accurate reflection of their meaning.

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21 DATED: March 19, 2012

LAW OFFICES OF RHEUBAN & GRESEN

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23 By: Steven M. Cischke
24 Steven M. Cischke
25 Attorneys for Plaintiff, Steve Karagiosian
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